

REMARKS

Claims 1, 2, 5, 6, 8-39, 41-84, 87, 89-94 and 96-108 are pending in this application. Reconsideration and allowance of this application are respectfully requested.

A. Reference Submitted in Last Response

In their last response the Applicants submitted another copy of an article entitled "An Indoor Wireless System for Personalized Shopping Assistant" as requested by the Examiner. The Applicants respectfully request that the Examiner initial the original PTO-1449 that lists this article indicating the Examiner has fully considered this reference.

B. Claim Rejections – 35 U.S.C. §102

Claims 1, 5, 11-20, 28-39, 41-42, 45-56, 61-84, 91, 92 and 96-108 were rejected under 35 U.S.C. §102(e) as being anticipated by Treyz et al., U.S. Patent No. 6,587,835 ("Treyz"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

(i) The Broadcast & Fulfillment Features

Applicants submit that Treyz fails to disclose or suggest an apparatus for processing customer orders that also includes a transceiver which broadcasts a wireless signal to establish a wireless communications link with mobile customers within a predetermined distance of a vendor facility to fulfill an order, as recited in the independent claims.

Instead, Treyz appears to disclose a system that includes a "local wireless transmitter/receiver" (198) that allows a user's "hand held" device (12) to place

orders without the use of a broadcast signal and without reference to the use of a signal within a predetermined distance to assure that an order is fulfilled (see Treyz, columns 21 and 22).

After reading the Examiner's comments on page 15 of the Final Office Action it appears that the Examiner is nonetheless taking the position that the device 198 in Treyz does broadcast a signal to the hand held device 12. Notably, however, the Examiner makes no mention of the claimed feature relating to a "predetermined distance".

In response, the Applicants note that nowhere in Treyz is a "broadcast" signal described. Furthermore, it goes without saying that Treyz does not, therefore, disclose or suggest such a signal transmitted within a predetermined distance. More to the point, even if a signal transmitted by the device 198 to the hand held device 12 could be considered a broadcast signal, such a signal is not described as being sent within a predetermined distance of a vendor facility in order to assure that an order is fulfilled. Rather, the only distance limitation placed on the signal is that imposed on it by the particular technology selected by the implementor to transmit the signal (i.e., IR or RF); no consideration is given to whether an order can be successfully fulfilled before the customer arrives at a vendor's facility. Said another way, Treyz is not concerned with how close or far the hand held device 12 is from a vendor's facility to fulfill an order.

(ii) The Use of an Order Queue Based on a Customer's Distance From A Fulfillment Station

Claims 1, 5, 11-20, 28-39, 84, 91, 92 and 96-108 also include the feature of arranging customer orders in a queue based on customer distances from a fulfillment station. Treyz does not disclose or suggest such an arrangement.

(iii) Conclusion with respect to the §102 rejections based on Treyz

Accordingly, because Treyz does not disclose each and every feature of the claimed inventions, Treyz cannot anticipate claims 1, 5, 11-20, 28-39, 41-42, 45-56, 61-84, 91, 92 and 96-108 based on 35 U.S.C. §102(e).

Accordingly, Applicants respectfully request reconsideration, withdrawal of the rejections and allowance of claims 1, 5, 11-20, 28-39, 41, 42, 45-56, 61-84, 91, 92 and 96-108.

C. Claim Rejections – U.S.C. §103

(i.) Claims 2, 3, 4, 21, 57, 70 and 71

Claims 2, 3, 21, 57, 70 and 71 were rejected under 35 U.S.C. §103(a) as being unpatentable over Treyz in view of Cupps et al., U.S. Patent No. 5,991,739 ("Cupps"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Applicants note that Cupps does not overcome the noted deficiencies of Treyz noted above. For this reason, Applicants respectfully submit that claims 2, 21, 57, 70 and 71 (claim 3 has been cancelled), which depend from one of

the independent claims mentioned above, are not rendered obvious by the combination of Treyz in view of Cupps.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 2, 21, 57, 70 and 71.

(ii.) Claims 4, 6-9 and 58-60

Claims 4, 6-9 and 58-60 were rejected under 35 U.S.C. §103(a) as being unpatentable over Treyz in view of Cupps as applied to claim 1 above, and further in view of Ding et al., U.S. Patent Publication No. 2002/059111 ("Ding"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Applicants note that Ding does not overcome the noted deficiencies of Treyz in view of Cupps noted above. For this reason, Applicants respectfully submit that claims 6, 8, 9 and 58-60 (claims 4 and 7 have been cancelled), which depend from one of the independent claims mentioned above, are not rendered obvious by the combination of Treyz in view of Cupps and Ding.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 6, 8, 9 and 58-60.

(iii.) Claim 10

Claim 10 is rejected under U.S.C. §103(a) as being unpatentable over Treyz in view of Cupps as applied to claim 1 above, and further in view of Tracy et al., U.S. Patent No. 5,979,757 ("Tracy"). Applicants respectfully disagree and traverse this rejection for at least the following reasons.

Applicants note that Tracy does not overcome the noted deficiencies of Treyz in view of Cupps noted above. For this reason, Applicants respectfully submit that claim 10, which depends on independent claim 1, is not rendered obvious by the combination of Treyz in view of Cupps and Tracy.

Accordingly, Applicants respectfully request withdrawal of the pending rejection and allowance of claim 10.

(iv.) Claims 93-94

Claims 93-94 are rejected under 35 U.S.C. §103(a) as being unpatentable over Treyz in view of Hall, U.S. Patent No. 6,026,375 ("Hall"). Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Applicants note that Hall does not overcome the noted deficiencies of Treyz noted above. For this reason, Applicants respectfully submit that claims 93-94, which depend from independent claim 84, are not rendered obvious by the combination of Treyz in view of Hall.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 93-94.

(v.) Claims 85-90

Claims 85-90 are rejected under 35 U.S.C. §103(a) as being unpatentable over Treyz in view of Ding. Applicants respectfully disagree and traverse these rejections for at least the following reasons.

Applicants note that Ding does not overcome the noted deficiencies of Treyz noted above. For this reason, Applicants respectfully submit that claims

87, 89 and 90 (claims 85, 86 and 88 have been cancelled), which depend from independent claim 84, are not rendered obvious by the combination of Treyz in view of Ding.

Accordingly, Applicants respectfully request withdrawal of the pending rejections and allowance of claims 87, 89 and 90.

D. Entry of this Amendment After Final

Entry of this Amendment After Final ("AAF") is solicited because the AAF: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issues regarding further search and/or consideration; (c) does not present any additional claims without canceling the corresponding number of finally rejected claims; and (d) places the application in better form for appeal, if an appeal is necessary.

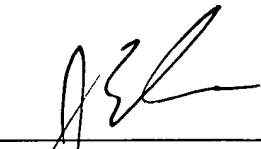
Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John E. Curtin at the telephone number listed below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

CAPITOL PATENT & TRADEMARK LAW FIRM, PLLC.

By



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